



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

HY-MARK CYLINDERS, INC.

Registration No. VAR051236

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Hy-Mark Cylinders, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Regulation" means 9 VAC 25-151-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which became effective June 30, 1999, was reissued July 1, 2004 and expires on June 30, 2009.

SECTION C: Finding of Facts and Conclusions of Law

1. Hy-Mark Cylinders, Inc. ("Hy-Mark") operates a facility at 305 E Street, Hampton, Virginia ("facility") that manufactures aluminum cylinders used for the medical field. Storm water discharges from the facility are subject to the Permit through Registration No. VAR 051236, which was effective July 1, 2004 and expires on June 30, 2009. Storm water discharges from the facility were previously subject to the Permit through Registration No. VAR550239, which was issued November 15, 2001 and expired June 30, 2004.
2. Part I.A.1 and Part IV.C of the Permit require Hy-Mark to conduct benchmark monitoring of storm water discharges from Outfalls No. 001 and 002 for the presence of copper.
3. Part I.A.1.b of the Permit requires Hy-Mark to conduct benchmark monitoring once during each annual monitoring period between July 1 and June 30.
4. Part I.A.4.a of the Permit requires Hy-Mark to record benchmark monitoring results for each outfall on a Discharge Monitoring Report ("DMR") and retain copies of the DMRs at the facility.
5. Hy-Mark is required to develop and implement a facility Storm Water Pollution Prevention Plan ("SWP3") according to requirements outlined in Part III of the Permit.
6. Part I.A.1.a of the Permit requires Hy-Mark to perform quarterly visual examinations of storm water discharges from both permitted outfalls and maintain reports thereof with the SWP3.
7. During a DEQ facility inspection on June 20, 2007 DEQ staff documented Permit compliance deficiencies, with respect to monitoring requirements, including the following:
 - a. The reports of the quarterly visual examinations of storm water quality did not distinguish between the two permitted outfalls as required by Part I.A.1.a.(1) of the Permit.
 - b. Hy-Mark had not performed annual benchmark monitoring of discharges for the 2004-2005, 2005-2006 and 2006-2007 annual monitoring periods as required by Part I.A.1.b and Part IV.C of the Permit.
8. During a DEQ facility inspection on June 20, 2007 DEQ staff documented Permit compliance deficiencies, with respect to SWP3 requirements, including the following:
 - a. The facility SWP3 site map did not include all of the information required by Part III.B.2.c.(4) and (9) of the Permit.

- b. Routine facility inspections of compliance with best management practices and the SWP3 had not been conducted quarterly or filed with the SWP3 as required by Part III.B.6.b.(1)(e) of the Permit and Part C 4) of the SWP3.
 - c. Facility employees had not been trained in the components and goals of the SWP3 as required by Part III.B.6.b.(1)(f) of the Permit and Part C 5) of the SWP3.
 - d. The SWP3 did not include a certification of non-storm water discharges as required by Part III.D.1 of the Permit and Part C 7) of the SWP3.
 - e. The annual comprehensive site compliance evaluation required by Part III.E of the Permit and Part D of the SWP3 had not been performed.
9. During the DEQ facility inspection on June 20, 2007 DEQ staff documented housekeeping deficiencies, which could allow discharges of contaminants to storm water, in violation of Part III.B.6.b.(1)(a) of the Permit and Part C 1) and 2) of the SWP3, including the following:
- a. At three locations possible pollutants were leaking through the walls of the facility's production building to the outside.
 - b. There were aluminum shavings on the floor of the production building near an exit door.
 - c. On one side of the production building there were three unidentified pipes and a hole that penetrated the wall to the outside of the building.
 - d. There was apparent pollutant staining on the ground outside the roll-up door to the production building.
 - e. Drums were stored outside without secondary containment.
 - f. There was a hose leading to the outside of the production building from a portable sump pump that was lying in a puddle of oil-contaminated water inside the building.
 - g. An overflow pipe on an industrial water tank located on the outside of the production building opened directly to the environment.
 - h. The drain line from a sink on the inside of the production building penetrated to the outside of the building and opened directly into the environment.
10. On July 26, 2007, DEQ issued Notice of Violation ("NOV") W2007-07-T-0001 to Hy-Mark. The NOV advised Hy-Mark of the violations of Permit conditions Part I.A.1.a.(1), Part I.A.1.b., Part IV.C, Part III.B.2.c.(4) and (9), Part III.B.6.b.(1) (a), (e) and (f), Part III.D.1, Part III.E and SWP3 conditions Part C 1), 2), 4) and 5), and Part D 7) revealed during the inspection conducted by DEQ staff on June 20, 2007.
11. On July 20, 2007, July 26, 2007 and August 15, 2007 Hy-Mark provided responses to the NOV and submitted an updated SWP3 with a site map which contained the information

required by Part III.B.2.c.(4) and (9) of the Permit and a certification of non-storm water discharges; reports of benchmark monitoring of both permitted outfalls for the 2007-2008 annual reporting period; and photographic evidence that, with the exception of the overflow pipe on the industrial water tank noted in subparagraph C.9.g, it had remedied the housekeeping deficiencies noted in paragraph C.9 of this Order. In those responses Hy-Mark further asserted that it intended to comply fully with all remaining Permit and SWP3 requirements, including "third-party" quarterly inspections, sampling, employee training and annual comprehensive site compliance evaluations. On September 13, 2007 Hy-Mark forwarded to DEQ photographic evidence that the overflow pipe from the industrial water tank had been tied into a production line.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders Hy-Mark, and Hy-Mark agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Hy-Mark, and Hy-Mark voluntarily agrees to pay a civil charge of \$3,900 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Hy-Mark's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hy-Mark, for good cause shown by Hy-Mark, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Hy-Mark admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Hy-Mark consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hy-Mark declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or

regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Hy-Mark to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Hy-Mark shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Hy-Mark shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hy-Mark shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Hy-Mark intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hy-Mark. Notwithstanding the foregoing, Hy-Mark agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Hy-Mark. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hy-Mark from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Hy-Mark voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2007.

Francis L. Daniel

Hy-Mark Cylinders, Inc., voluntarily agrees to the issuance of this Order.

By: * Wayne Franklin

Date: 10/5/2007

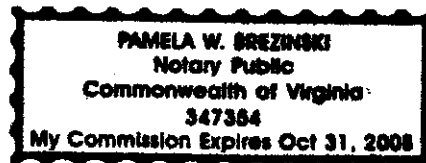
Commonwealth of Virginia
City/County of HAMPTON

The foregoing document was signed and acknowledged before me this 5 day of
October, 2007, by WAYNE FRANKLIN, who is
(name)

PRESIDENT of Hy-Mark Cylinders, Inc., on behalf of Hy-Mark.
(title)

Pamela W. Brezinski
Notary Public

My commission expires: 10-31-2008



APPENDIX A

Hy-Mark shall:

1. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, certification of training of staff who are responsible for implementing activities identified in the SWP3 or otherwise responsible for storm water management. Training shall include guidance on spill response, good housekeeping and material management practices.
2. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, the reports of all facility inspections conducted since June 20, 2007 by or on behalf of Hy-Mark to ensure compliance with the SWP3 and the Permit.
3. Mail all submittals and reports required by this Appendix A to:

Mr. Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462